

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LANDMARK TECHNOLOGY, LLC,

Case No. 3:18-cv-01568-JR

Plaintiff,

ORDER

v.

AZURE FARMS, INC.,

Defendant.

RUSSO, Magistrate Judge:

Plaintiff moved to dismiss defendant's counterclaim asserted pursuant to ORS § 646A.810 (doc. 17) arguing the counterclaim was preempted under federal patent law. In its opposition brief, defendant stated an "amended counterclaim can and will assert objective baselessness" and therefore the counterclaim should not be preempted. Def.'s Opp'n Br. at 3, 7 (doc. 24). Defendant did not file an amended answer and instead on January 9, 2019, filed a motion to stay (doc. 27).

This Court heard oral argument on March 20, 2019. Prior to hearing argument on plaintiff's motion to dismiss, the Court indicated it was inclined to dismiss the counterclaim as

pleaded, but not dismiss the counterclaim based on preemption of the Oregon statute. Plaintiff's counsel responded, in court, that it was "okay with that." In light of this concession and defendant's assertion that it intended to amend its counterclaim, and because defendant indicated it had prepared an amended answer, plaintiff's motion to dismiss (doc. 17) is denied as moot. In addition, defendant's motion to stay (doc. 27) is denied. Plaintiff's request for attorney's fees and costs is denied at this time. Any amended answer is due March 27, 2019. Following the filing of an amended answer, and ruling on any responsive pleadings, the court will schedule a Rule 16 conference for purposes of additional case scheduling.

Plaintiff's motion to dismiss (doc. 17) is denied as moot and defendant's motion to stay (doc. 27) is denied.

DATED this 25th day of March, 2019.

/s/ Jolie A. Russo

Jolie A. Russo
United States Magistrate Judge